

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

JAMES E. LENOIR

PETITIONER

v.

No. 1:00CR114-D

UNITED STATES OF AMERICA

RESPONDENT

MEMORANDUM OPINION

This matter comes before the court on the *pro se* petitioner's January 13, 2006, petition for a writ of *habeas corpus* under 28 U.S.C. § 2255. The petitioner argues that he was sentenced improperly because the length of his sentence was based in part on facts (drug quantity) not determined by a jury or admitted during sentencing, but instead contained in his Pre-Sentence Investigation Report under the holding of *United States v Booker*, 125 S.Ct 738 (2005). The petitioner seeks a new sentence based upon the holding in *Booker*. For the reasons set forth below, the instant petition shall be denied. *Booker* applies only to those cases "pending on direct review or not yet final on January 12, 2005." *United States v. Madrigal*, 2005 WL 913476 (5th Cir.). The petitioner's judgment of conviction and sentence was final long before the January 12, 2005, cutoff date, as the court entered judgment February 5, 2001. The petitioner did not appeal. As such, this case is not one to which *Booker* applies, and the instant petition for a writ of *habeas corpus* under 28 U.S.C. § 2255 shall be dismissed with prejudice. A final judgment consistent with this memorandum opinion shall issue today.

SO ORDERED, this the 4th day of January, 2007.

/s/ Glen H. Davidson
CHIEF JUDGE